

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IES UTILITIES INC. and NUCLEAR MANAGEMENT COMPANY	DOCKET NO. WRU-99-54-151 (SPU-99-33)
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ORDER GRANTING WAIVER

(Issued March 31, 2000)

On November 29, 1999, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a formal complaint, identified as Docket No. SPU-99-33, with respect to IES Utilities Inc.'s (IES) plan to enter into a proposed service agreement with Nuclear Management Company (NMC). Consumer Advocate asserted this transaction constitutes a reorganization pursuant to Iowa Code § 476.76 and 199 IAC chapter 32.

IES filed an answer on December 27, 1999, claiming the service agreement did not constitute a reorganization. In the alternative, if the Board determined the reorganization statutes and rules did apply, IES asked for a waiver of the requirements of the reorganization statutes and rules pursuant to Iowa Code § 476.77(4). Consumer Advocate filed an objection to the waiver request on December 30, 1999.

Under the service agreement, NMC will act as the agent of IES in connection with the operation, management, maintenance, and repair of Duane Arnold Energy Center (DAEC), the making of capital improvements to DAEC, and the performance of decommissioning work required upon DAEC's retirement. Subject to approval

from the Nuclear Regulatory Commission (NRC), IES will transfer operating authority for DAEC to NMC. However, NMC may not obligate IES to pay costs of capital improvements materially different from those agreed to in the annual budget, may not obligate IES to pay costs of capital improvements not agreed to by IES' board of directors, and may not sell or otherwise encumber DAEC.

IES will remain the title owner of DAEC and will continue to be entitled to all energy and capacity from DAEC. In addition, IES will continue to have the right to determine the electric output from DAEC, subject to NMC's exclusive right to shut down the plant for safety reasons. The service agreement has no impact on the current book value of DAEC because the authority to operate DAEC has no value separate from physical ownership of the plant and therefore has no book value. Alliant Energy, IES' parent, has a 25 percent interest in NMC. Northern States Power, Wisconsin Electric Nuclear Power Company, and Wisconsin Public Service also each own 25 percent. IES states the purpose of NMC is to sustain and improve the overall performance of the nuclear plants currently operated by the affiliated utilities of NMC member companies. IES expects that substantially all of IES' operating personnel who are dedicated to DAEC will be transferred to NMC, either as direct employees or as contracted employees under the supervision of NMC.

Iowa Code § 476.76(1) defines reorganization to include, among other things, the direct or indirect disposition of "the whole or any substantial part of a public utility's assets." Because ownership of DAEC will remain with IES, there is no direct disposition of DAEC itself. The question is whether there is an indirect disposition of IES' assets within the statutory definition of reorganization.

While IES correctly asserts that utilities, including IES, have previously contracted or out-sourced work, this agreement is different because NMC will have total control and responsibility for day-to-day operation of DAEC. For example, the agreement provides NMC is the agent of IES to take all actions necessary to operate the plant and is also the agent for all matters relating to the operating license and NRC regulation of the plant. In addition, NMC has sole authority to make all decisions relating to the public health, safety, and security, including operating the plant at reduced capacity or shutting the plant down. While IES generally determines the plant's output, it loses this authority when health, safety, or security are at issue. Finally, IES grants NMC unrestricted access to and the exclusive right to use and control DAEC and to determine all activities within the site boundary of DAEC.

The Board agrees with Consumer Advocate that transfer of the operating license and day-to-day operations of DAEC constitutes an indirect transfer of assets subject to the reorganization statutes and rules. The retention of certain long-term management decisions is not sufficient to avoid application of the reorganization statutes and rules because complete day-to-day operational authority is being transferred by IES pursuant to the agreement, which IES can cancel, without cause, only upon one year's notice.

The final issue to address is whether it is appropriate to grant a waiver. Iowa Code § 476.77(4) specifically grants the Board the authority to waive the requirements of the reorganization statutes and rules if Board review is not necessary in the public interest. The Board recognizes that with respect to safety and operation issues regarding DAEC, the NRC is the agency with the authority,

technical knowledge, and expertise. Board review on these issues would be redundant.

IES has not justified the proposed agreement by its projected cost savings, and therefore did not submit information regarding past operating costs and projected future operating costs. However, a rate proceeding, not a reorganization proceeding, is the appropriate forum to review such cost information. IES has sufficiently justified the agreement by the sharing of management and operations expertise that will result. The Board also notes that because control of dispatch and marketing of power will remain with IES, no competitive impact is present. The Board will grant a waiver of the requirements of the reorganization statutes and rules because further Board review is not necessary in the public interest. The Board notes that if IES subsequently transfers ownership of DAEC, an application for reorganization will have to be filed.

IT IS THEREFORE ORDERED:

The request for waiver filed by IES Utilities Inc. on March 14, 2000, is granted.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 31st day of March, 2000.